IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [illegible]

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

ALLIS-CHALMERS MANUFACTURING COMPANY, and INTERNATIONAL UNION, UAW-AFL-CIO (Locals 248 and 401), *Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY MEMORANDUM FOR THE UNION

[illegible] L. [illegible], Jr.,
John [illegible],
[illegible] L. [illegible],
1001 Connecticut Ave., N.W.,
Washington, D.C. [illegible],
Attorneys for the Union.

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The Company's Brief, resting chiefly on a "plain meaning" contention, is largely unresponsive to the four major points emphasized by the Union to this Court. Accordingly, only brief answer is required to the Company's *ipse dixit* that Taft-Hartley's general "restrain or coerce" clause expunged the time-honored union power to discipline members who have defaulted on their organizational responsibilities.

1. *Repetitive fines.* The Company relies heavily on a charge that the Union violated the Act in 1959 by its communication to the dissident members suggesting that they could be fined on a separate day-separate offense basis (R.

42). However, UAW Local 401—one of the two respondents before the Board—*never* suggested imposition of cumulative fines. And while Local 248 did inform its dissident members that their conduct subjected them to a fine "up to $100 for each offense" and suggested that each day of violation "may well constitute a separate offense", in the subsequent Local 248 disciplinary proceedings the $100 limitation of the International Union's Constitution was honored and *no* fine in excess of that sum was imposed, even on members who had worked on many days during the strike. During the 1962 strike it was thus obvious to members of both locals that $100 was in fact—as the International Constitution specifies—the maximum fine imposable on a UAW member who defies an authorized strike for improved working conditions. Under these circumstances the Labor Board's decision properly addressed itself exclusively to the $100 fines actually levied, rather than to the earlier implication by one of the two UAW locals that more than that amount could have been imposed.

2. *Compulsory dues.* Choosing to ignore what this Court specifically stated in *NLRB* v. *General Motors Corp.*, 373 U.S. 734, 742, the Company continues blandly to assert that Allis-Chalmers employees were compelled to take the oath of union membership, though the Union-Company contract requires only the payment of dues. The Company (Br. p. 31) now suggests for the first time that the "requirement of financial support increases the pressures on the employees to join the union . . ." There is, however, a vast difference between compulsion to join and compulsion to pay, for the latter and present situation preserves the individual's option, by refraining from joining the union, to avoid union norms and union discipline.

But even as concerns the more limited compulsion to *pay*, there are safeguards. In *Machinists* v. *Street*, 367 U.S. 740, and *Brotherhood* v. *Allen*, 373 U.S. 113, this Court sharply

limited compulsory exactions under the Railway Labor Act when employees object to expenditure of their union support payments beyond the area of collective bargaining. While the Court has not yet spoken in a case arising under the National Labor Relations Act, we believe that the *Street-Allen* principle equally applies there and protects Allis-Chalmers employees from having to fund union activities beyond the collective bargaining area. It also bears emphasis that no objection to paying their dues has been voiced by members of Locals 248 and 401. This new "compulsion" argument comes not from any member of the Union or Allis-Chalmers employee, but from the Company whose concern to limit the effectiveness of employee strikes speaks louder than its stalwart defense of intra-union individualism.

3. *Fines as "coercion"*. The Company's Brief (p. 7) urges that "union fines generally, and these particularly" are *"coercive"*—a characterization no less applicable to all legal sanctions—and glibly equates that term with the *"coercion"* which imports invidious duress. This verbal sleight-of-hand cannot, of course, obscure the unrefuted showing (Union Brief pp. 38-43) that labor union authority to discipline members by fines has been repeatedly upheld since the landmark 1867 ruling in *Master Stevedores' Association* v. *Walsh*. The Company's literalistic formula (Br. p. 13) that "a union fine is clearly coercive and the right to refrain from a strike is the exercise of a Section 7 right," merely begs the question in this case. That question is not whether union discipline as such is coercion; it is whether Congress sought to reach so far in 1947 by the general "restrain or coerce" clause as to prohibit unions from enforcing by traditional membership discipline the crucial organizational obligations their members have sworn to honor. The Company's damning of union fines adds nothing to the resolution of that central statutory question.

4. *Majority rule.* The Company apparently recognizes the weakness of its "discipline-coercion" equation, for it goes further to claim that Congress also forbade the underlying union norm which requires membership solidarity in such matters as the economic strike. The Company asserts (Br. pp. 20-21) that the statute assures employees—including union members—"free choice whether to work or not to work regardless of what procedures are followed by a union in calling a strike and regardless of what the purpose of the strike may be. The statute recognizes that the only effective means to assure that union action is responsive to the will of those it represents, is to guarantee to each employee [and member] the free choice whether to join or refrain from each particular concerted activity." The Company thus finally exposes the heart of its contention: that Congress has *secured to every member of a labor union the right to membership on his own terms, abiding only by those regulations and obligations which he may be inclined to honor.*

So revolutionary a reading of the statute is, we submit, wholly unwarranted. Without a shred of legislative evidence, the Court is asked to find that Congress expunged the principle of majority rule which has governed under our federal labor laws since the Wagner Act, and which from earliest days has been the cornerstone of our voluntary organization law.[1] This Court has quoted with favor

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[1] The *organizational anarchy* which the Company urges Congress to have enacted in 1947 would wipe out the principle of *organizational allegiance* which has been thought to apply since the earliest days within our social institutions and associations. As long ago as 1872, in a case involving a religious association, this Court applied that principle in terms which precisely fit the present issue. In *Watson* v. *Jones*, 13 Wall. 679, at 728-729, the Court stated the guiding rule:

> "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controversial questions of faith within

the Congressional emphasis that majority rule in labor relations "is sanctioned by our governmental practices, by business procedure, and by the whole philosophy of democratic institutions." *NLRB* v. *A. J. Tower Co.*, 329 U.S. 324, 331. Congress and this Court have recognized repeatedly that minority interests in the matter of working rights must yield to the majority interest of the employees as democratically implemented by the collective bargaining representative. See, e.g., *J. I. Case Co.* v. *NLRB*, 321 U.S. 332; *Ford Motor Co.* v. *Huffman*, 345 U.S. 330. Ever since majority rule was made the norm in labor relations the individual's "right to work" on his own terms and time has been required to bow before the majority interest; it cannot now be revived by presuming a Congressional intention *to bar within the union's own ranks* the principle which the union may and must apply in representing all the employees.

5. *"No-strike" and lockout cases.* It is notable that the Company declines to answer *Rockaway News* and *American Ship*, where this Court has already ruled that both the Section 7 right to participate in a union strike and the Section 7 right not to participate must give way before larger collective and public interests protected by the Act. In *Rockaway News* (345 U.S. 71) the Court held that a union can waive by contract with the employer an individual worker's right to respect a picket line and refuse to work; even without the individual's acquiescence his "protected"

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the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed."

right under Section 7 was subordinated to the collective interest. In like vein, this Court in *American Ship* (380 U.S. 300) held that the individual employee's "right to work" falls before the employer's right to lock out all his employees, or all his unionized employees, as a bargaining device to affect the union's contract demands; the necessary effective and balanced collective bargaining process of the statute was held to pre-empt the Section 7 right to refrain from a collective work stoppage. No different result can obtain here. *If the employer can bar work for all his employees the union can bar work by all its members.* It cannot be that the Act denies to unions as a bargaining device a work stoppage power reciprocal to the lockout authority of the employer, particularly when the union's authority is restricted to its *own members* who have sworn their allegiance. That the employer may now resort to the historic union weapon of work stoppage whereas the union is to be denied that power even over its own membership is too anomalous to command this Court's approbation.

6. *Wildcatting.* The Company steadfastly declines to recognize the salient difference between "unprotected" strikes while a contractual no-strike clause is in effect, and the "protected" strike on contract expiration—which unions could no longer control by membership discipline if the ruling below is affirmed. A most recent example underlines the necessity for union disciplinary power both during a contract and upon its expiration to control the critical question of strike participation and strike abstention. On February 15, 1967 a strike was commenced without the approval of the International Union by UAW Local 549 against the General Motors Corporation in Mansfield, Ohio. The Local maintained that the strike was lawful; the International Union determined that the strike breached both the collective bargaining contract and the Interna-

tional's Constitution. It ordered the Local's officers to terminate the strike but they refused to do so.

General Motors then sued the Local in the state courts for an injunction, and the International Union appeared in the case to inform the Court that it viewed the strike as unlawful. The Court quickly enjoined all picketing and violence, but the strike itself was permitted to continue.

Meanwhile, the International Union wrote to each of more than 2,700 members of the Local to emphasize that hundreds of thousands of their fellow-workers at General Motors would suffer shut-downs if the wildcat strike continued. And on February 21, 1967, the International's Executive Board ordered every officer of the Local to attend a Show Cause Hearing before it to determine whether under Article 12 Section 3 of the International's Constitution they should be removed from office and an administrator appointed to take over Local 549. At the hearing, held on February 22, 1967, the International finally succeeded in obtaining the agreement of the Local's officers to end the strike.

If the Union had not had the power to impose disciplinary sanctions upon the Local's officers and members, it would have been unable to end the strike and to prevent the layoff of thousands of UAW members. And certainly expulsion from the Union of the 2,700 members involved would have been a doubtful and drastic remedy, unnecessary to achieve the compliance which lesser discipline was able to effect. Yet that is exactly the inhibition upon union authority which the Court below has imposed (at least upon expiration of a "no-strike" clause) in its decision that union discipline of offending members is prohibited by the Taft-Hartley Act.

Perhaps the Congress has power to legislate so idiosyncratic a result. But until it does so, there is nothing

in the general terminology of the statute which supports the view that unions may no longer impose reasonable discipline on members violating their organizational responsibilities. The Labor Board's construction of the Act should accordingly be reinstated by reversal of the ruling below.

Respectfully submitted,

JOSEPH L. RAUH, JR.,
JOHN SILARD,
STEPHEN I. SCHLOSSBERG,
1001 Connecticut Ave. N.W.,
Washington, D.C.
Attorneys for the Union.

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